

# The Odisha Gazette

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**LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT**

**NOTIFICATION**

The 1st June 2013

No. 5156—li/1(BH-I)-3/2006(Pt.)-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 23rd February, 2013 in Industrial Dispute Case No. 89 of 2006 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s. Jaikishan Dassmall Jute Products (P) Ltd., At/P.O. Rupsa, Dist. Balasore and their workman Shri Umesh Chandra Sethi was referred to for adjudication is hereby published as in the Schedule below :—

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 89 OF 2006

Dated the 23rd February 2013

*Present :*

S. A. K. Z. Ahamed, O.S.J.S. (Jr. Branch)  
Presiding Officer,  
Labour Court,  
Bhubaneswar.

*Between :*

The Director,  
M/s. Jaikishan Dassmall Jute  
Products (P) Ltd.,  
At/P.O. Rupsa,  
Dist. Balasore.

.. First Party—Management

And

Shri Umesh Chandra Sethi,  
At Pinchhabania,  
P.O. Hatiadiha,  
Dist. Balasore.

.. Second Party—Workman

**Appearances :**

Shri Anirudha Majhi, Office Executive	. . For the First Party—Management
Shri U. C. Sethi	. . For the Second Party—Workman himself.

**AWARD**

The Government of Odisha in exercise of powers conferred by sub-section (5) of Section 12, read with Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 have referred the following dispute to this Court vide Order No. 11288—II/1(BH-1)-3/2006-LE., dated the 20th December 2006 of the Labour and E.S.I. Department, Bhubaneswar for adjudication :—

"Whether the termination of services of Shri Umesh Chandra Sethi, Operator with effect from the 21st January 2001 by the management of M/s. Jaikishan Dassmall Jute Products (P) Ltd., At/P.O. Rupsa, District Balasore is legal and/or justified ? If not, what relief Shri Sethi is entitled to ?"

2. The case of the second party workman, who was the General Secretary of the Union, in short, is that initially he was appointed under the first party management as an unskilled labourer with effect from the 13th May 1985 and subsequently he was promoted to the post of highly skilled Operator. It is alleged that in the capacity of a Trade Union Member as he was espousing the cause of the workers before the first party and for that he was not in its good book, the first party was always in a motive to eliminate him from job and for that it created an incident on 23-1-2001 when some antisocials, i.e., the henchmen of the first party attacked him but he was saved luckily. It is stated that on the next day, i.e., Dt. 24-1-2001 when he reported for duty he was not allowed to enter inside the Factory and thereby the management prevented him to discharge his duty. Thereafter he approached the Manager of the Factory who paid a deaf ear to his approach. It is further stated that the first party management thereafter waited for a long time and suddenly issued a letter on 11-6-2002 stating therein that his resignation, dated the 29th January 2001 having been accepted he should collect his dues within 15 days. When he made a representation protesting that the resignation is fraudulent one and was never tendered by him on the 29th January 2001, again the management issued him a letter on the 14th June 2002 asking him to collect his dues and did never consider his representation. In the above premises, the workman has pleaded that prohibition of his entry into the Factory premises amounts to termination of his service and the same having been effected without recourse to the provisions of the I. D. Act, he is entitled to reinstatement in service with back wages and other benefits.

3. Admitting about the employment of the workman under it, the first party management has filed its written statement stating therein, *inter alia*, that the present proceeding is not maintainable having been raised after a long time. The specific stand taken by the management in its written statement is that on 29-1-2001 the second party being present in the Factory tendered his resignation and on its acceptance on the same day he did not come to the Factory thereafter to receive his wages and other benefits. It is stated that after waiting for a long time the first party issued a letter to the second party on 11-6-2002 and again on 21-6-2002 to collect his dues but he did not respond. It is stated that his unpaid dues amounting to Rs. 22,607 is still with the management and it is agreeable to pay the same to the workman on account of his resignation. The action of the management being not a termination of service but living the establishment of the first party upon

tendering resignation by the workman, the first party has prayed to answer the reference disentitling the second party from any relief.

4. In terms of the reference, the following issues have been framed :—

#### ISSUES

- (i) "Whether the termination of services of Shri Umesh Chandra Sethi, Operator with effect from the 21st January 2001 by the management of M/s. Jaikishan Dassmall Jute Products (P) Ltd., At/P.O. Rupsa, Dist. Balasore is legal and/or justified ?
- (ii) If not, what relief Shri Sethi is entitled to ?"

5. In order to substantiate their respective stand, both parties have adduced oral as well as documentary evidence. While the workman examined himself as W.W. No. 1, the management examined its Office Executive as M.W. No. 1. Documents marked Exts. 1 and 2 have been filed and proved by the workman. Similarly, documents marked Exts. A to I have been filed and proved by the management.

6. *Issue No. (i)*—The fact that the second party workman was under the employment of the first party management since 1985 is admitted. The dispute culminating the present reference arose in January, 2001. When the second party challenges the action of the management in preventing his entry into the Factory premises to be termination of his service, the management asserts that upon acceptance of resignation. On 29-1-2001, the workman has foisted this false claim on the pretext that such resignation was obtained from him forcibly. On the face of such assertions, the moot question that falls for determination is whether it is a case of resignation from service of the workman, as pleaded by the management or a refusal of employment, as pleaded by the workman.

7. In the context, a glimpse over Ext. A, the letter of resignation, dated the 29th January 2001, would reveal that the contents thereof is in the handwriting of the workman but the date "29-01-2001" put on Ext. A is written by someone other than the workman. It is therefore not safe to rely on the plea of the management that Ext. A was submitted by the workman on 29-1-2001. Presuming for the sake argument that Ext. A was submitted by the workman on 29-01-2001, but non-communication of its acceptance to the workman till issuance of Ext. B, i.e., on 11-06-2002 creates a doubt about the bonafideness of the management. If at all the management takes a stand that soon after submitting resignation the workman did not turn up to the Factory, but it has failed to establish as to what prevented it to remain silent over the matter for more than a year and thereafter by utilising Ext. A asked the workman to collect his dues vide Ext. B. The attitude of the management towards the workman therefore appears to be an act of unfair labour practice adopted perhaps for the reason of involvement of the workman in the Trade Union activities. In the circumstances, the plea of the workman that Ext. A was obtained from him by way of coercion cannot be ruled out.

8. As it appears from the complaint of the workman made before the A.L.O., Balasore that he was not allowed to enter inside the Factory premises on 24-01-2001. The resignation, Ext. A is said to have been tendered by the workman on 29-01-2001, i.e., after five days of his alleged refusal of employment. The circumstances narrated in the foregoing Paragraphs constrain this Court to draw an inference that he was refused employment and such refusal being in contravention of the provisions of Section 25-F of the Act is illegal as well as unjustified.

9. *Issue No. (ii)*—In view of the findings on issue No. (i) the second party is entitled to some relief. The workman has rendered more than fifteen years of continuous service under the management, i.e., the most vital period of his life when he was energetic to shoulder responsibilities and accordingly he was also promoted to hold the post of an Operator. But, now because of strained relationship between the parties, the relief of reinstatement, in my considered view, would not be appropriate. At the same time the relief of back wages in absence of his gainful employment elsewhere during the period is also felt to be not appropriate and in lieu of reinstatement and back wages a compensation to the tune of Rs. 1,00,000 (Rupees one lakh) only, in my considered view, would be just and proper to be awarded in favour of the workman. Accordingly, the management is directed to pay the above compensation to the workman within a period of two months of the date of publication of the Award in the Official Gazette.

Dictated and corrected by me.

S. A. K. Z. AHAMED  
23-02-2013  
Presiding Officer  
Labour Court, Bhubaneswar

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23-02-2013  
Presiding Officer  
Labour Court, Bhubaneswar

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By order of the Governor  
J. DALANAYAK  
Under-Secretary to Government